

1 | agreements that, that last over time, the good, the good name
2 | of the company, and also the potential ongoing business.

3 | Q So would it be fair to say that if Britt Business
4 | Systems did a volume in 1991 of 1.2 million and in 1992 of 1.4
5 | million, its overall value to, let's say to a potential
6 | purchaser of the business, would be more based on the 1992
7 | volume?

8 | A Yes.

9 | Q Would -- Is it Mr. Johnson, your sales rep?

10 | A Um-hum, yes.

11 | Q Would his leaving Britt Business Systems have any
12 | effect upon the value of the business?

13 | A I can't necessarily say because, because right now
14 | we are hiring more sales people, so there could be better
15 | sales people.

16 | Q Okay. Thank you.

17 | MR. KOERNER: I don't think I have anything further,
18 | Your Honor.

19 | JUDGE MILLER: Redirect, Mr. Alpert?

20 | MR. ALPERT: I have a couple of questions, Your
21 | Honor.

22 | JUDGE MILLER: All right.

23 | REDIRECT EXAMINATION

24 | BY MR. ALPERT:

25 | Q Ms. Davis, there was some testimony about a Xerox

1 contract that had been placed before you for you -- Do you
2 recall that testimony?

3 A Yes, sir.

4 Q Approximately what percentage of your business is
5 under the contract with Xerox, 100 percent being all the
6 business of Britt Business Systems?

7 A I'd say about 80, 85 percent.

8 Q Okay. And what percentage of the business is done
9 underneath the contract with Panasonic that was also shown to
10 you I believe as Ringer Exhibit Number 5?

11 A I'd say about five percent.

12 Q About five percent?

13 A Um-hum.

14 Q And what is attributed the other 15 to 20 percent?
15 JUDGE MILLER: Ten to fifteen.

16 BY MR. ALPERT:

17 Q Ten to fifteen percent?

18 A Other supplies. We do different supply items, such
19 as laser remanufactured cartridges, different ribbons, fax
20 paper for all brands of fax machines, fax supplies for all
21 plain paper fax supplies, surge protectors, a lot of little
22 accessories and so forth.

23 Q Are those pursuant to a contract?

24 A No.

25 Q And is business for those items transferrable?

1 A Yes. It's just volume based.

2 Q Now, just to clarify the record, you mentioned a
3 portion of the company of Britt Business Systems which
4 operates out of Cleveland. Is that correct?

5 A Right.

6 Q Can you -- Is that -- Who runs that portion of the
7 company?

8 A Ben Davis.

9 Q Is that still a portion of your company?

10 A No, it's not.

11 Q And when did that occur?

12 A Back in last of March, first of April.

13 Q Of what year?

14 A 1993. Ben incorporated himself. Well, we separated.

15 Q Okay. So it's a separate corporation now?

16 A Yes.

17 Q So you said that the \$1.4 million in gross revenues
18 were bigger -- that were adopted by -- or attributable to
19 Britt Business Systems --

20 A Yes.

21 Q Something less than that figure would presumable be
22 attributable in the future by virtue of that separation?

23 A Yes.

24 Q And --

25 JUDGE MILLER: Wait a minute.

1 WITNESS: Well, I hope not.

2 JUDGE MILLER: Wait a minute. Just a minute.

3 WITNESS: Yes, sir.

4 JUDGE MILLER: I don't care if Ben Davis
5 incorporates himself or not. He's still working for you,
6 isn't he?

7 WITNESS: No, sir.

8 JUDGE MILLER: He is not part of Britt Business
9 Systems?

10 WITNESS: No. Ben, Ben managed the Cleveland office
11 and he has incorporated Britt Business Systems of Cleveland.
12 We're totally separate entities.

13 MR. ALPERT: Your Honor --

14 JUDGE MILLER: Did you allow him to use the name
15 Britt Business Systems?

16 WITNESS: Yes, sir.

17 JUDGE MILLER: He asked you for permission to, to,
18 to do that?

19 WITNESS: Yes, sir.

20 JUDGE MILLER: But up until he incorporated, that
21 office in Cleveland was yours, wasn't it?

22 WITNESS: Yes. He managed it, yes.

23 JUDGE MILLER: Yeah. And it's still yours, isn't
24 it?

25 WITNESS: No, sir.

1 JUDGE MILLER: Did he buy it from you?

2 WITNESS: No. We separated. We separated legally
3 and accounting-wise. We separated. And whatever assets or
4 whatever he had, they were moved over to him and separated.

5 JUDGE MILLER: Well, let's just you and I assume for
6 a minute that 80 percent of Britt's business was Columbus and
7 20 percent of it was Cleveland at one time. Now, just assume
8 that.

9 WITNESS: Okay.

10 JUDGE MILLER: But at that time, at that time when
11 he was just managing it for you, all 100 percent belonged to
12 Shellee Davis?

13 WITNESS: Yes.

14 JUDGE MILLER: Now, you're separated. Are you
15 telling me that as a result of the separation Shellee Davis
16 has now lost 20 percent of her net worth?

17 WITNESS: No, sir. We, we operated as separate
18 profit centers. Ben just operated Britt out of Cleveland. I
19 had the headquarters. We were two separate profit centers.
20 He had -- He, he could carry whatever line of product that he
21 wanted to carry in addition to Xerox. I could do the same in
22 Columbus. He, he does not have a Panasonic territory up there
23 and we operated as two separate companies, and that's why we
24 decided to separate, so he could just do his own thing.

25 JUDGE MILLER: What's he brought to the business

1 outside of separating and taking 20 percent of your take?

2 That's what's got me.

3 MR. ALPERT: Your Honor, can I ask one question?

4 And I think this might clarify it.

5 BY MR. ALPERT:

6 Q Who, who -- What happened to the profits that would
7 be generated out of the Cleveland office prior to the
8 separation?

9 A It would go to Ben.

10 Q Entirely to Ben?

11 A Yes.

12 Q And they did not go at all to you?

13 A We did not share in profits.

14 Q And, of course, now that the separation has
15 occurred, there is still no sharing of profits. Is that
16 correct?

17 A Right. Everything's the same.

18 JUDGE MILLER: Then why in heaven's name did you
19 ever add them together to get the 1.4 million? You were
20 separate, you've always been separate, haven't you?

21 WITNESS: That's a whole accounting thing. I'd have
22 to refer to my accountants and my lawyers for that.

23 JUDGE MILLER: All right. All right, go ahead.
24 Have you completed your redirect, Mr. Alpert?

25 MR. ALPERT: I think I have. Just give me one more

1 second, Your Honor. I have nothing.

2 JUDGE MILLER: Recross, Mr. Kravetz?

3 MR. KRAVETZ: Your Honor, two questions arose in the
4 course of other people's cross examination which I believe
5 left a hole in the record and may I request --

6 JUDGE MILLER: All right, you can --

7 RECROSS EXAMINATION

8 BY MR. KRAVETZ:

9 Q Ms. Davis, you testified that you got your equipment
10 costs from WBBY in the arrangement with Carl Fry, and you also
11 testified that your sales figures were all your own, when we
12 were talking about the development of your budget at the end
13 of December. Is that --

14 A No, that doesn't sound quite right, as I
15 understanding you're saying it.

16 Q Well, let me try again. Do you recall being asked
17 about the basis of your -- the figures for your budget at the
18 end of December?

19 A Yes.

20 Q And do you recall testifying that the costs of your
21 equipment were determined from Carl Fry, the letter from Carl
22 Fry?

23 A I recall saying that all that -- all the technical
24 equipment, that cost came via Cavell.

25 Q Right.

1 A Via Dan. And that for the leasing of the, the power
2 and the transmitter site and the studio came from the Carl Fry
3 letter, the \$6,000. And some of -- some or perhaps all of the
4 equipment, all the studio-type programming equipment.

5 Q And you developed certain sales figures yourself.
6 Do you remember --

7 A Yes.

8 MR. ALPERT: Objection, Your Honor. Insofar as
9 sales figures, there are no sales figures. They're already
10 contained in the budget.

11 MR. KRAVETZ: Well, if Your Honor --

12 WITNESS: The sales reps, the employees.

13 BY MR. KRAVETZ:

14 Q I have no problem with Mr. Alpert's description. My
15 question is there are a lot of other costs that go into the
16 operation of the station, utilities, insurances, and license
17 fees.

18 A Um-hum.

19 Q Now, weren't those in fact taken from a model budget
20 that Mr. Alpert sent you?

21 A As far -- No. The license fees and everything?

22 Q Didn't he send you a model budget which included
23 those figures?

24 A Not for the license and all that. No, it would be
25 equipment, the technical equipment. Emergency power units and

1 the directional antennas and all that, that's that model that
2 I received. Unless I'm not understanding you right.

3 MR. KRAVETZ: Okay, I have no further questions,
4 Your Honor.

5 JUDGE MILLER: All right. Mr. Belendiuk?

6 MR. BELENDIUK: Yes.

7 RECROSS EXAMINATION

8 BY MR. BELENDIUK:

9 Q Ms. Davis, I'm trying to understand your
10 relationship with Ben Davis. He was your partner in Britt
11 Business Systems, was he not?

12 A He was not a stockholder or an officer in Britt
13 Business Systems. He ran the Columbus -- or the Cleveland
14 office.

15 JUDGE MILLER: But he was your employee, was he not?
16 You see, you keep saying he's not -- he wasn't part of the
17 Britt organization, then you turn around and say he ran the
18 Cleveland office. He has to be your employee.

19 WITNESS: Okay. Okay.

20 JUDGE MILLER: No, no, no.

21 WITNESS: Yes.

22 JUDGE MILLER: Now, don't, don't cave in to me. I
23 mean --

24 WITNESS: I'm sorry. Okay, yes, he was, but he
25 wasn't a partner as --

1 JUDGE MILLER: Okay, he wasn't a partner, but he, he
2 was a, he was an employee, a high level employee but an
3 employee?

4 WITNESS: Yes. But he was paid out of the Cleveland
5 office.

6 JUDGE MILLER: The Cleveland office, and that's
7 where he had to get his, his salary?

8 WITNESS: Yes, sir.

9 JUDGE MILLER: But that money that he was getting
10 for salary was your money, wasn't it?

11 WITNESS: It was money that he generated within the
12 Cleveland office.

13 JUDGE MILLER: I admit he generated it, but he
14 generated it by selling inventory, and that inventory was your
15 inventory he was selling, wasn't it?

16 WITNESS: Ben could order equipment and he would pay
17 for it or I could sell him equipment and he would pay me for
18 it, but I did not buy equipment for him. Do you understand?

19 JUDGE MILLER: Well, I'm getting, I'm getting the
20 strange feeling that maybe you really didn't have anything to
21 do with Cleveland except the -- you could make stuff available
22 to, to, to one another. Is that a fair statement? Really,
23 you're Columbus and that's all you are. You're not Cleveland.

24 WITNESS: Right.

25 JUDGE MILLER: Except for accounting purposes,

1 counting up the money at the end of a year, and you said the
2 1.4 million included Cleveland.

3 WITNESS: Yes, sir.

4 JUDGE MILLER: And you're sure of that?

5 WITNESS: I'm pretty sure, but I'll double check
6 with my accountant. My expertise in business isn't the
7 numbers, it's the marketing and the customer service. And so
8 that's why I rely on the resources of my accountants for that
9 kind of stuff.

10 JUDGE MILLER: I understand. Mr. Belendiuk.

11 MR. BELENDIUK: Yes.

12 BY MR. BELENDIUK:

13 Q Would you take a look at your exhibits, Exhibit 1,
14 Attachment B? It's called -- It's an article from Black
15 Enterprise, May 1991. Do you have that in front of you,
16 Ms. Davis?

17 A Yes, I do.

18 Q All right. Now, I'll tell you where I want you to
19 look. On the left-hand column one paragraph up from the
20 bottom, it starts "Six months after launching her venture."
21 It says there that you became partners with your brother-in-
22 law Ben Davis, does it not?

23 A Yes, it does.

24 Q And that's not a true statement?

25 A No, it's not a true statement.

1 Q Okay. Now, the other question there, it says that
2 "The former Xerox account executive who is Britt's vice
3 president." Okay. Now, is that also not a true statement?

4 A That's not a true statement.

5 Q That's not a true statement?

6 A Uh-uh.

7 Q Okay. Now I'd like you to take a look at -- Now,
8 were you interviewed for this article?

9 A Yes, I was.

10 Q All right. Now, I'd like you to take a look at
11 Attachment E, and the first page is their Small Business
12 Awards 1991.

13 A Um-hum.

14 Q All right. And on the next page, Shellee F. Davis,
15 do you see that?

16 A Um-hum.

17 Q Are you with me? Were you interviewed for this
18 article?

19 A Yes, sir.

20 Q All right. Now, in the very last paragraph on that
21 page it says, "Her partner decided she didn't want to stay, as
22 she wanted to stay in the interior design business. So six
23 months after launching her company, Davis became partners with
24 her brother-in-law Ben Davis, a former Xerox account
25 executive."

1 A Um-hum.

2 Q Is that not a true statement?

3 A Legally, Ben Davis is not my partner and he does not
4 have any shares of stock in my company.

5 Q Well, did you tell this newspaper that he was your
6 partner?

7 A Yes.

8 Q Did you tell the newspaper that he was vice
9 president?

10 MR. ALPERT: Objection, Your Honor.

11 JUDGE MILLER: Oh, no. Overruled.

12 WITNESS: I might have at that time because Ben and
13 I were going over whether he should become vice president or
14 that he shouldn't, whether we should go in partnership. I
15 told him if he becomes vice president then he's going to have
16 to give up on some money for it, and we did not come to a
17 conclusion on him playing any financial part within Britt to
18 become a partner other than the fact that he runs the
19 Cleveland office and that's a separate profit center up there
20 and pays his own expenses. And he did not become vice
21 president because we did not go into that arrangement where he
22 had financial input into the Columbus business.

23 BY MR. BELENDIUK:

24 Q Is Ben Davis also Britt's general manager?

25 A I mean, Ben Davis could call himself whatever he

1 likes up in Cleveland. There's no legal --

2 Q What did you call him?

3 A I said he runs Cleveland. I mean, he could go any -

4 - And, Mr. Belendiuk, this may not be why --

5 Q Ms. Davis, you're not answering my question. Did
6 you call Mr. Davis Britt's general manager? Did you refer to
7 him as that?

8 A Yes.

9 Q You did?

10 A At some point I'm sure I did, Mr. Belendiuk.

11 Q And you referred to him as vice president at some
12 point?

13 A I really don't know if I referred to him as that. I
14 might have.

15 Q Well, you made that statement, didn't you?

16 A I know. I might have. But I know that we did not
17 consummate him as the VP of Britt Business Systems.

18 Q Let me ask you, and I'm still confused. It says you
19 originally had a partner in Britt Business Systems. Is that
20 correct?

21 JUDGE MILLER: Which, which one of these are we
22 looking at?

23 MR. BELENDIUK: Right now we're not looking at any,
24 but I can point her to one or two.

25 JUDGE MILLER: Well, I, I wanted to look at one.

1 MR. BELENDIUK: Sure. Your Honor, the two that I'm
2 referring to is Exhibit 1, Attachment B, and I, I pointed to
3 the witness to next to the last paragraph from the bottom. It
4 says "Six months after launching her venture." Do you see
5 that? I can show it to you if you like.

6 JUDGE MILLER: Well, I'm, I'm interested in
7 Attachment E, which, which has basically some of the same
8 information you're talking about.

9 MR. BELENDIUK: Yeah, but one is a vice president
10 and one is referred to as general manager and vice president.
11 I'm sorry.

12 JUDGE MILLER: Ms. Davis, turn, turn if you will to,
13 to Attachment E of, of Exhibit 1.

14 WITNESS: Yes, I have it.

15 JUDGE MILLER: And, and here's an article about
16 Shellee Davis by Ann Marie Geddes.

17 WITNESS: Yes.

18 JUDGE MILLER: Who you know very well, don't you?

19 WITNESS: No. She's a reporter.

20 JUDGE MILLER: She's interviewed you on a couple
21 occasions, hasn't she?

22 WITNESS: Twice. Or once.

23 JUDGE MILLER: Twice?

24 WITNESS: No, once. No, twice, twice. I think we
25 met twice.

1 JUDGE MILLER: All right. Now, looking at the
2 second column of the article, "Her partner decided she wanted
3 to stay in the interior design business. So six months after
4 launching her company, Davis became partners with her brother-
5 in-law Ben F. Davis, a former Xerox account executive." Is
6 that information that you gave to Ann Marie Geddes?

7 WITNESS: Yes.

8 JUDGE MILLER: Then we see the paragraph, "Ben Davis
9 is Britt's general manager and has opened the company's
10 Cleveland branch office."

11 WITNESS: Yes.

12 JUDGE MILLER: You gave her that information?

13 WITNESS: Yes.

14 JUDGE MILLER: Now, to a, a layman or someone
15 without a deeper understanding of accounting, it sounds like
16 the Cleveland branch office belongs to Britt Business Systems,
17 doesn't it?

18 WITNESS: Um-hum.

19 JUDGE MILLER: And if it belongs to Britt Business
20 Systems, you're the 100 percent owner of Britt Business
21 Systems. Isn't that correct?

22 WITNESS: Yes, sir.

23 JUDGE MILLER: Now it says, "The firm has six
24 employees in Columbus and three in Cleveland." Is that the
25 nine people you've been talking about?

1 WITNESS: No, sir. That's at the Columbus office
2 I've talked about, as far as today.

3 JUDGE MILLER: All right. Now, this article -- Ann
4 Marie L. Geddes -- Well, that was after interviewing you.

5 WITNESS: Um-hum.

6 JUDGE MILLER: When was that, do you know?

7 WITNESS: I think this was back in 1991, in probably
8 August, September. Or maybe July or -- maybe July.

9 JUDGE MILLER: All right. Go ahead, Mr. Belendiuk.

10 MR. BELENDIUK: Your Honor, I believe I have no more
11 questions.

12 JUDGE MILLER: All right. Mr. Yelverton?

13 MR. YELVERTON: No questions, Your Honor.

14 JUDGE MILLER: Mr. Koerner?

15 MR. KOERNER: No, Your Honor.

16 JUDGE MILLER: Shellee Davis, you are excused.

17 Thank you for testifying.

18 WITNESS: All right. Thank you.

19 JUDGE MILLER: Now, does that complete the
20 presentation of your witness, Mr. Alpert?

21 MR. ALPERT: Yes, it does, Your Honor.

22 JUDGE MILLER: And do you rest your case?

23 MR. ALPERT: I do indeed.

24 JUDGE MILLER: All right.

25 MR. BELENDIUK: Your Honor.

1 JUDGE MILLER: Yes, Mr. Belendiuk?

2 MR. BELENDIUK: All right, I have the copies of the
3 exhibits. If I can, if I can -- I've already given them to
4 the court reporter.

5 JUDGE MILLER: Okay.

6 MR. BELENDIUK: I'm going to hand you --

7 JUDGE MILLER: All right. Everything now is
8 completed of the, the -- your cases. At least we've finished
9 one direct cases. Of the five remaining applicants, it's my
10 turn to do some work, and I'll first read to you from 1.263A
11 of the Commission's rules. I'll read a portion of it. "The
12 presiding officer may direct any party other than the
13 Commission counsel to file proposed findings of fact and
14 conclusions, briefs, or memorandum of law. Such proposed
15 findings of fact, conclusions, briefs, and memorandum of law
16 shall be filed within 20 days after the record is closed,
17 unless additional time is allowed."

18 I now so direct you to file proposed findings of
19 fact and conclusions of law. I'm going to give you more than
20 20 days, which is something -- that rule is -- that portion of
21 the rule has always been honored more in the speech than in
22 its observance. And I'll tell you -- I'll give you some dates
23 in a minute. Now, let me read 47 CFR 1.263C to you. "In the
24 absence of a showing of good cause, therefore, the failure to
25 file proposed findings of fact, conclusions, briefs, or

1 memorandum of law when directed to do so may be deemed a
2 waiver of the right to participate further in the proceeding."

3 Now, that spells out the consequences of your
4 failure to file proposed findings of fact and conclusions of
5 law, the ones I just directed you to file. I, I, I've been
6 using this standard instruction and I once read it and a
7 lawyer jumped up and said do you mean that if I don't file
8 findings you're going to dismiss my application? And I said
9 that's right. And guess what happened? Six -- Three months
10 later the only person not to file --

11 With those guidelines, the following phase -- phase
12 1 procedural dates will govern. Any motions to correct the
13 phase 1 transcript will -- Any motions to correct the
14 transcript, if any, will be filed on or before October 8th,
15 1993. Proposed findings of fact and conclusions of law will
16 be filed on or before October 25th, 1993. The applied
17 findings, if any, will be filed on or before November 4th,
18 1993. In the unlikely event you decide to pass on the phase 1
19 reply findings, please send a letter, send me a letter to that
20 effect with copies to all the parties, so they won't be
21 waiting with bated breaths for your replies.

22 Will someone -- Mr. Belendiuk, will, will you notify
23 Mr. Shook of these procedural dates?

24 MR. BELENDIUK: Yes, I will. I'll give him a call
25 Monday morning.

1 JUDGE MILLER: Okay. He's got a little doo-dad that
2 he goes through on the, on the engineering. So he has to file
3 some findings. Now, are those procedures clear,
4 Mr. Belendiuk?

5 MR. BELENDIUK: Yes, Your Honor.

6 JUDGE MILLER: Mr. Koerner?

7 MR. KOERNER: Yes, Your Honor.

8 JUDGE MILLER: Mr. Kravetz?

9 MR. KRAVETZ: Yes, Your Honor.

10 JUDGE MILLER: Mr. Alpert?

11 MR. ALPERT: Yes, Your Honor.

12 JUDGE MILLER: And Mr. Yelverton?

13 MR. YELVERTON: Yes, Your Honor.

14 JUDGE MILLER: Is there anything further we need to
15 take up, Mr. Belendiuk?

16 MR. BELENDIUK: No, Your Honor.

17 JUDGE MILLER: Mr. Koerner?

18 MR. KOERNER: No, Your Honor.

19 JUDGE MILLER: Mr. Kravetz?

20 MR. KRAVETZ: No, Your Honor.

21 JUDGE MILLER: Mr. Alpert?

22 MR. ALPERT: No, Your Honor.

23 JUDGE MILLER: Mr. Yelverton?

24 MR. YELVERTON: No, Your Honor.

25 JUDGE MILLER: Now, because of the six pendings to

1 enlarge, we cannot close the evidentiary record today. After
2 I rule on those six enlargement requests, I'll either schedule
3 a phase 2 hearing or if I should deny all the enlargement
4 request I'll close the evidentiary record and the phase 1
5 evidence will form the basis for the initial decision. So we
6 stand adjourned until further orders.

7 (Whereupon, at 4:45 p.m., the hearing was
8 adjourned.)

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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Applications of David Ringer, ASF Broadcasting Corp.,
Name Wilburn Industries, Inc., Shelle F. Davis, Ohio
93-107 / Radio Associates

Docket No.

Washington, D.C.

Place

August 31, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 130 through 449, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

9-9-93

Date

Lou Deosaran
Lou Deosaran, Transcriber
Free State Reporting, Inc.

Sept. 13, 1993

Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

Sept. 13, 1993

Date

Barbara J. Lord
Barbara J. Lord, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area 261-1902
Balt. & Annap. 974-0947